

11 April 2008

Donald S. Clark
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue
Room H-135 (Annex N)
Washington, DC 20580

Re: Online Behavioral Advertising Principles

Dear Mr. Clark:

The commission has failed to effectively protect U.S. consumer privacy in the digital marketing era. The commission's decision to issue its proposed staff principles on the same day it approved, 4-1, Google's acquisition of behavioral marketing and online ad giant DoubleClick—without any privacy safeguards—is not a coincidence.¹ The commission—frankly under both the Bush and the Clinton administrations—has been largely incapable to take a meaningful stand on data collection and interactive marketing. It was one reason why the Center for Digital Democracy's predecessor group, the Center for Media Education, had to seek congressional approval of the Children's Online Privacy Protection Act in 1998.

Introduction

In 2006 and 2007, the Center for Digital Democracy and the U.S. Public Interest Research Group filed a complaint and an amended complaint, asking the agency to immediately enact the necessary rules and regulations to protect U.S. consumers from a range of unfair and deceptive practices. CDD and USPIRG expressed concern that the online advertising industry was running roughshod over basic privacy rights in five key areas:

- User Tracking/Web Analytics: an elaborate system of surveillance that tracks, compiles, and analyzes the movements of Internet users.

¹ <http://www.ftc.gov/os/caselist/0710170/index.shtm>.

- Behavioral Targeting and retargeting: a system of personalized, one-to-one marketing designed to deliver, through investigation and inference, "relevant" advertising to "in-market" Internet users.
- Audience Segmentation: the classification of individuals into narrowly drawn categories, whose often-flippant taxonomy, from "Shopaholics" and "Penny Pinchers" to "Lonely Hearts" and "Hardcore Gamers," masks the crass, manipulative nature of such digital stereotyping.
- Data Gathering/Mining: the "moving target" of online marketing, whose algorithms grow more powerful as the databases they adumbrate and assess—literally billions of search terms, "cookie crumbs," and assorted transactions—grow more extensive.
- Industry Consolidation: with more and more data falling into fewer and fewer hands—reflected in the multi-billion-dollar acquisitions of Google, Microsoft, and AOL in recent months—the opportunities for abuse of that power only increase.²

Clearly, the time for regulation is here—but not merely *self*-regulation. The history of self-regulation clearly shows that in the absence of meaningful legal rules, the level of consumer protection will be minimal. In the Internet and privacy area, it is clear that the establishment of COPPA created a serious set of structural safeguards for the marketplace that has well served an important part of the online audience.³ By settling for well-meaning but ultimately ineffective rules, the commission is further placing U.S. consumers—and other visitors who engage with our online media system—at risk. As we will discuss, information about individuals' experiences online are being collected, analyzed, sold and traded, and ultimately used to deliver interactive marketing communications involving such sensitive areas as mortgage and financial data, health concerns, children and adolescents, and many other areas.

² Center for Digital Democracy and U.S. PIRG, "Supplemental Statement In Support of Complaint and Request for Inquiry and Injunctive Relief Concerning Unfair and Deceptive Online Marketing Practices," Federal Trade Commission Filing, 1 Nov. 2007, http://www.democraticmedia.org/files/FTCSupplemental_statement1107.pdf.

³ For a discussion of the impact of COPPA in the context of self-regulation, see Kathryn C. Montgomery, *Generation Digital: Politics, Commerce, and Childhood in the Age of the Internet* (Cambridge, MA: MIT Press, 2007).

While the FTC delays taking firm action, the digital marketplace continues to grow in its capacity to harvest greater amounts of detailed consumer information. In contrast to the FTC's waffling, its European Union counterparts are acting with the kind of professional diligence that is sorely missing in Washington. Just this week, for example, the Article 29 Working Party issued a comprehensive ruling to protect the privacy of consumers using search engines. Unlike the FTC, which too often defers to industry, the Working Party—while recognizing the importance of online commerce and its requirements for market growth—nevertheless issued a recommendation that protects privacy in a manner that also promotes freedom. For U.S. consumers to have to rely on the European Commission to enact safeguards governing the online marketplace is—frankly—a mark of the FTC's failure in this crucial area.⁴ But it is precisely because we believe the FTC is incapable of displaying the political courage to truly protect the interests of Internet consumers that we are providing the Article 29 Working Party with detailed information concerning behavioral marketing for its recently announced investigation, especially the role of U.S.-based companies that have operations in the EU.⁵

We also recognize that the staff proposals by the commission are in response to the pressure brought by the Electronic Privacy Information Center, USPIRG, and CDD, a clarion call for the commission to impose privacy safeguards in its review of Google's acquisition of DoubleClick. The commission's failure to do so, and its approval of so many other digital marketing merger deals during 2007 without any appropriate safeguards, have exacerbated problems consumers now face with digital marketing. These transactions include Microsoft/aQuantive and Yahoo!/Blue Lithium. The commission stood silent while companies such as Time Warner acquired behavioral targeting firm Tacoda as well as Third Screen Media, and Quigo. It has condoned the consolidation in the newly emerged online advertising "auction" marketplace, creating new privacy threats to U.S. consumers. As a consequence of the commission's failure to be in the forefront of consumer protection in the digital marketing era, we now have

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http://publications.mediapost.com/index.cfm?fuseaction=Articles.showArticleHomePage&art_aid=80136.

⁵ See 2008-09 work plan. http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/wpdocs/2008_en.htm.

Google controlling the DoubleClick Advertising Exchange, Yahoo! owning the Right Media Exchange, and Microsoft the adECN Exchange.

1. Market Consolidation and New Online Privacy Threats Exacerbate the Problem

Ironically, the FTC's failure to address both market consolidation in the online ad industry and privacy concerns has contributed to an interest by some journalists to begin raising these issues more prominently. Directly following the commission's 4-1 approval of the Google/DoubleClick deal, the *New York Times* commissioned an analysis conducted by comScore examining the growing number of consumer "data collection events" online. Literally hundreds of billions of such events were documented, as one can see from the chart cited on the *Times* site. As the *Times* "Bits" post on the research explained,

When all these data collection events are combined for users in the United States in December 2007, Yahoo had the potential to gather data, through 400 billion events in the month. Time Warner, which includes AOL, was second, with about 100 billion events. Google was not too far behind with 91 billion. Interestingly, Microsoft, with 51 billion events in December is far behind not only the other big Internet companies, but also the News Corporation's Fox Interactive Media, which owns MySpace. [The reporter also chided the commission for its clearly evident failings to pursue a meaningful privacy-related review in the merger, writing that "When regulators evaluate mergers from a consumer protection standpoint, they consider whether mergers would end up raising the prices that consumers pay for those companies' products. Since people "pay" with information about themselves on the Internet, rather than with dollars, regulators should consider consumer data when they consider mergers."]⁶

We agree with the commission's staff paper accompanying the present call for comments that behavioral targeting is just one small part of a complex and interconnected system that collects and harvests the information furnished by consumers in the course of their digital communications (e.g., "online behavioral advertising means the tracking of a consumer's activities online—including the searches the consumer has conducted, the web pages visited, and the content viewed...").⁷ But we believe the commission staff

⁶ <http://bits.blogs.nytimes.com/2008/03/09/how-do-they-track-you-let-us-count-the-ways/>; http://graphics8.nytimes.com/images/2008/03/04/technology/Dec_accesspoints.jpg.

⁷ "Online Behavioral Advertising: Moving the Discussion Forward to Possible Self-Regulatory Principles." FTC. Available at <http://www.ftc.gov/opa/2007/12/principles.shtml>.

should have included in its analysis a discussion of how the online advertising and marketing industry views the digital landscape as a "marketing and media ecosystem." Under such an "ecosystem," as envisioned by the collaboration of the Association of National Advertisers, the Interactive Advertising Bureau, the American Association of Advertising Agencies, and Booz, Allen, Hamilton in its 2008 white paper document "HD Marketing 2010,"

Marketers can take control of the relationships and create new opportunities to directly reach, connect with, and influence consumers. In the past, marketers couldn't listen to consumers in real-time, or predict what they were going to do or say. But now, they can—and they do.... When consumers use digital media to search, shop, blog, socialize, or seek entertainment, they create opportunities for marketers to gain immediate insights. Now, marketers can have real-time conversations with consumers. They can identify and draft high "consumer influencers" as brand advocates, gather ideas to improve their products or services, and change their marketing messages and media mix instantaneously, depending on what is working now. And they can do all of the above immediately.⁸

The HD report helps illuminate how the "ecosystem" has been created—right under the "nose" of the FTC—to constantly monitor, collect, and then target unaware consumers:

The influx of data into marketing has been one of the biggest changes to players across the landscape.... Data mining is a "great example of a disruptive technology that dramatically changes marketing and enables individual targeting," says Dave Morgan [former head of Tacoda and subsequently an AOL executive]. "It changes how you have to approach your markets." Every Web page's individual views, every word typed in a search query box (also known as the "database of consumer intentions"), every video download, and even every word in an e-mail may create one more data point that a marketer can leverage and use to more precisely target the audience with customized media placement and messaging. Tacoda (recently purchased by AOL), the largest advertising network, has more than 4,500 sites, collects over 135 million individual behaviors 50 times each month, and has segmented the online audience into behavioral buckets. In addition to having more data and more insights, marketers are building tools to project behaviors. Marketing mix models based purely on historical spend are no longer sufficient. Predictive modeling tools are on the horizon. Almost 40 percent of financial-services/ travel companies surveyed are using behavioral targeting as an input into marketing mix allocation.... Almost a quarter of the marketers surveyed are adding people in marketing and media analysis roles. They are

⁸ Edward Landry, Carolyn Ude, and Christopher Vollmer, "HD Marketing 2010: Sharpening the Conversation," Booz/Allen/Hamilton, ANA, IAB, AAAA. 2008., http://www.boozallen.com/media/file/HD_Marketing_2010.pdf.

hiring quant jocks, engineers, rocket scientists, Ph.D.s in math and hard sciences, and other quantitatively skilled professionals to staff marketing optimization, investment, and productivity teams. These new hires have the number-crunching chops to work with predictive algorithms and integrated databases, overlaid consumer online behavior data, and granular point-of-sale data, which translates into increased efficiency of promotion, marketing, and advertising decisions in real time.⁹

Instead of addressing consumer privacy, the joint advertising industry report recommends that marketers should "ruthlessly build consumer insights. Leverage digital channels to capture insights—one-to-one interactions, blog behavior, search behaviors, and real-time behavioral patterns. Measure media usage behaviors as a part of consumer insights. Seek to understand how consumers use media for entertainment, community, and information. Partner with agencies and bring the ethnographers along."¹⁰

One of the central issues for the commission to address if it is to protect consumers is the need to explain to consumers the elaborate system that is now in place—and growing—to collect data for micro-targeting purposes. We want to also say at the outset that we are not opposed to interactive advertising. With some exceptions regarding what we consider "sensitive" information, including children and adolescent data as well as health-related communications, we believe that with the proper safeguards (opt-in, user consent, limited retention, and other fair information principles), online marketing should play an important role contributing to a dynamic and democratic broadband and interactive "ecology." But marketing must be done in a way to ensure that consumers are meaningfully informed about the issues and can independently express their choices. They should understand that they are the subjects of evolving and sophisticated targeting platforms. For example, as one can see from the "Integrating Targeting Platform" offered by one behavioral marketer, users face an array of coordinated approaches, including "behavioral targeting, predictive targeting, Sociodemographic targeting, keyword targeting, Typology Data Enrichment, Realtime Web Analytics, Instream Mobile

⁹ HD Marketing 2010. Op. cit.

¹⁰ op cit.

Delivery, Realtime Brand Impact Studies, Relevancy Weighting, and Auto Categorization."¹¹

Some in the online ad industry, especially those from lobbying organizations, have engaged in what we view as a purposeful—and hypocritical—public relations campaign suggesting that without online and interactive digital marketing, the Internet would, literally, disappear. Such a view is, of course, incorrect, as the online medium has a much higher purpose than just advertising and consumer-based information. It is, as the U.S. Supreme Court confirmed in a landmark decision, a "vast democratic fora... a unique and wholly new medium of worldwide human communication... [a] dynamic, multifaceted category of communication."¹² Much of the material online is of an educational and noncommercial nature. Online advertising is, of course, growing as a key means of both funding content and extending the traditional concerns of marketers into the new media and behaviors of choice for today's consumers. The CDD/USPIRG effort is not designed to undermine interactive advertising. Rather, it is concerned with ensuring that online marketing is performed in an above-board and responsible manner. Thus, the complaints from IAB, for example, reflect a lack of understanding of the key dimensions of the debate over online marketing, privacy, and consumer protection in the digital era.¹³

Before we comment on the proposed principles, we reiterate that the commission must establish as a rule that consumers must be offered *opt-in* before any data are collected (with the exception of underage individuals governed by the COPPA statute). All data collection, from "cookie" to pixel tag to IP address, etc., requires an affirmative prior consent. The request for an opt-in must be accompanied by an understandable explanation on what data are being collected, how it will be used, the controls that users have over it (removing or correcting data, for example), the retention period, what

¹¹ This is from the EU-based Wunderloop company, but is typical of similar descriptions of multi-faceted targeting approaches. http://wunderloop.com/en/?page_id=54.

¹² Reno v ACLU, et al. <http://www.law.cornell.edu/supct/html/96-511.ZO.html#FN4>.

¹³ See, for example, remarks by the president of the IAB, <http://www.iab.net/iablog/2007/11/the-contradictions-of-antiadve.html>.

transmission to other parties or affiliates are involved (ad networks, ad auctions, etc.). The commission needs to bring up to date its definition of personally identifiable information to include IP addresses and cookie information. It's time that the agency embraced the 21st century and realistically addressed what is all too evident about the fundamental transformation of marketing and data collection that has occurred.¹⁴

In this new era of multi-application, multi-platform, micro-targeted, virally focused, and "immersive" multimedia-integrated approaches to data collection, consumers must be meaningfully informed—and must approve in advance—the respective approach marketers have selected. We find arguments that such information cannot be provided in a succinct but comprehensive way disingenuous. After all, online ad agencies, behavioral targeting platforms, trade publications, and even trade associations regularly provide such information to the industry as it seeks new customers (even offering a brief video explanation suitable for YouTube!).

Such disclosures must inform users of the goal of the data collection, so they can make a conscious and autonomous decision about whether they wish to agree. So, for example, a Time Warner/AOL/Advertising.com/Platform A/Tacoda platform would say, as Advertising.com notes on its site, that one of the goals of its behavioral targeting capabilities is to influence the research process: "Behavioral targeting is an advertiser's dream.... Consumers don't just click and buy online. They research their options, visiting multiple sites—even your own—before making a buy. Through behavioral targeting—and retargeting—we keep your brand top of mind during this crucial consideration phase."¹⁵ Or that consumers will experience "widgets" designed, as Google's DoubleClick explains, to foster "virality" and that it's there because it "integrates a viral component into any campaign." Users should know that these widgets are really ads, so perhaps Google can rephrase what it says about "widget ads": "This widget format is

¹⁴ We recognize that CDD and USPIRG have played a crucial digital "wake-up" call for the FTC (just as the Center for Media Education and other groups did during the 1990's). But the agency should be more responsible and pro-active to protect the public. While consumer groups such as ourselves are committed to do what is necessary to enhance the public welfare—such as our 2006 and 2007 complaints—it's time for the commission to act as the independent agency its founders, such as Louis Brandeis, envisioned.

¹⁵ http://www.advertising.com/agencies/solutions_behavioral.php.

designed to extend media dollars and reach for marketers by allowing users to 'grab' an ad and place it on their personalized homepage, blog or social network." As one can see from the YouTube "Brand Channel"—its "online media kit" designed to educate prospective advertisers about targeting, "engagement" and "insights"—short, informative videos have been created to explain to marketers how to make the interactive ad system work for them. Surely, consumers deserve no less.¹⁶

Microsoft can surely explain to its users what it says to potential customers in its "Behavioral Targeting" brochure, that such targeting is

a powerful solution to let you maximize your return and eliminate waste by targeting consumer who express interest in your products through their behavior.... Keyword search behavior and site visits classify users into dozens of unique segments. This data is matched...to Passport data, which includes demographic and geographic information.... Because of the immense reach of MSN and Windows Live properties, we ensure a large population to target.... Hotmail is an opportunity for you to reach...the millions of people that are making plans, discussing purchases and talking about the activities in their lives with others!¹⁷

Consumers should be told, as Microsoft advises its potential behavioral targeting clients, that among the segments they can be placed in include

"Home Buyers: Users Who Have Researched Information on Buying, Selling or Refinancing a Home";

"Credit Card Shoppers: Users Who Are in the Market for a New Credit Card and Have Looked for New Credit Card Offers";

"Home Refinancing and Home Equity Loan Researchers: Users Who Are Researching Home Refinancing and Home Equity Loans"; or

"New/Expecting Moms: Users (Women) Who Have Just Had a Child or Are Expecting to Have a Child in the Next 12 Months."¹⁸

¹⁶ <http://www.doubleclick.com/products/richmedia/widgetads.aspx>; <http://www.doubleclick.com/insight/blog/archives/doubleclick-rich-media-and-video/doubleclick-rich-media-announces-support-for-widget-advertising.html>; <http://www.youtube.com/advertise>.

¹⁷ "Behavioral Targeting Builds Brands Fast: Behavioral Targeting One-sheet," Microsoft Advertising Solutions, available as pdf at: <http://advertising.microsoft.com/ad-programs/microsoft-targeting>.

¹⁸ op.cit. <http://advertising.microsoft.com/ad-programs/microsoft-targeting>.

One should also expect Facebook and Microsoft to explain to the social network users that advertisers are told that they are an "engaged, emotive audience." Or that they are being targeted based on such targeting criteria as "Age, DMA, Gender, Hotmail Occupation, State/Province, Time Zone, User Country/Region, User Language." We would be remiss if we didn't also note that Microsoft, which is the "exclusive provider of banner advertising on Facebook" notes that "13.8% of users are between 12-17 years old" and is the top Web destination for 17-to-25-year-olds.¹⁹

Surely users at Yahoo deserve to understand how AMP!, Yahoo's new online ad platform, works, just as the marketers who received this press release on Monday, April 7:

AMP! from Yahoo will enable advertisers and publishers to connect with each other and their exact target audiences across the increasingly fragmented Internet, in a way that's not possible with current solutions.... The AMP! platform will ultimately help marketers buy across search, display, local, mobile, and video inventory—all from a single, integrated interface.... It will provide a suite of tools that easily allows precise geographic, demographic, and interest-based targeting across a vast network that includes Yahoo! owned-and-operated inventory and more than 600 U.S. newspapers in the Newspaper Consortium."²⁰

U.S. consumers, while on Yahoo or its affiliated sites, deserve to be as well informed as that company's prospective "health marketers," who are assured that they can use "sight, sound, motion and interaction to engage your consumers with your brand.... Utilize purchase data from Yahoo!/AC Nielsen Consumer Direct to target actual buyers of related and competing products—while monitoring offline sales impact. Find consumers by health condition with Yahoo!'s... Behavioral Targeting—drawn from search, editorial, registration and more."²¹ Or that for individuals concerned about politics, voting, and civic affairs, that Yahoo explains to political marketers that it offers "the most sophisticated targeting tools that allow micro-targeting of audiences. Tap into the Internet's largest source of information for new solutions on how to study and approach your target. We offer the most targeted elections audiences with more options than any

¹⁹ <http://advertising.microsoft.com/facebook>; <http://advertising.microsoft.com/facebook?tab=adformats>.

"Facebook One-Sheet," available as pdf at <http://advertising.microsoft.com/facebook?tab=adformats>

²⁰ <http://biz.yahoo.com/bw/080407/20080406005050.html?v=1>.

²¹ <http://advertising.yahoo.com/central/solutions/pharma/>.

other network or media."²² Yahoo should be able to explain to consumers that it refers to them as either "Engagers" or "Shoppers," noting that "with more behavioral data, real-time updates and audience modeling, Yahoo! Behavioral Targeting can deliver larger audiences and better performance than before. With Engagers, advertisers can target consumers specifically interested in a product category, moving them down the sales funnel and eliminating waste. With Shoppers, advertisers can target consumers based on likelihood to click, improving response and conversion rates." Among the clients of this behavioral targeting service, explains Yahoo, are Fidelity, Equifax, P&G, and Capital One.²³ Yahoo would appear to have the ability to create a video for consumers just as accessible as its new one explaining the Amp! service to the online ad industry.²⁴

2. Fundamental Reform Need: An Opt-In Mechanism

As we suggest above, the principle of transparency and consumer control should meaningfully provide for an opt-in mechanism before any data are collected. The principle should be revised to include a stipulation that consumers are clearly informed about the goals and nature of the marketing campaign or campaigns (including how the data are to be used and how the campaign is structured—for example, that it will include mobile marketing, contacts via IM, broadband videos, etc.).

Principle two should be amended to ensure that all data are efficiently and effectively anonymized, including IP addresses and related targeting information. User data should only be retained, if there is consent, for a very limited term. As the FTC knows, the Article 29 Working Party has proposed a six-month period for the retention of search-related data. There is no reason, beyond the unnecessary and privacy-challenging building of individual user profiles, for such data to be retained beyond the sixth-month term suggested by EU privacy authorities.²⁵

²² <http://advertising.yahoo.com/central/solutions/politics/>.

²³ <http://advertising.yahoo.com/marketing/bt/>. Yahoo! Behavioral Targeting pdf. (available at above site)

²⁴ <http://advertising.yahoo.com/amp/>.

²⁵ "Opinion in data protection issues related to search engines." Article 29 Working Party, 4 Apr. 2008. Available as pdf at http://ec.europa.eu/justice_home/fsj/privacy/workinggroup/wpdocs/2008_en.htm.

We wish to comment directly on some of the arguments and issues raised by Google in its comments for this proceeding that were submitted on April 4, 2008. We would hope that Google would play a more proactive role supporting serious rules to protect user privacy in the United States (as well as abroad). Google attempts to reframe the debate on online advertising and privacy into one focused on editorial diversity and small-business development. Given that 99 percent of Google's annual revenues are derived from data-collection-driven interactive advertising (nearly \$16.6 billion in 2007) and that it recently spent more than \$3 billion to acquire the interactive advertising (and data collecting) market leader DoubleClick, we are not surprised.²⁶ Google makes a number of claims that either aren't supported by the facts or require much more analysis and discussion. We would suggest that it is too early to claim, as Google does, that "online advertising provided by Google and others undeniably promotes freer, more robust, and more diverse speech." The growing consolidation of control over online ad revenues, including the dominance of Google, for example, in the global search section of the market, raises fundamental questions about the ultimate dispensation of advertising revenues both here in the U.S. and abroad. While Google offers as evidence its own role promoting the "long tail" of the Internet, such a rosy view is spun from digital PR cloth.

Indeed, just this week, an online advertising research firm analyzed market share for Google and its subsidiary DoubleClick, declaring that "DoubleClick owns the head and Google owns the tail."²⁷ Google knows that its acquisition of companies such as YouTube (which "currently delivers more than 100 million video views every day"), Feedburner ("the leading provider of media distribution and audience engagement services for blogs and RSS feeds") and now DoubleClick ("the hub of the world's leading digital publishers, marketers and agencies") has dramatically increased its capability, interest, and need (for its business goals) to capture as much information about individual

²⁶ 2007 annual report [filed 2/15/08]. Available at: <http://investor.google.com/order.html>; <http://www.techcrunch.com/2007/04/13/google-spends-31-billion-for-doubleclick/>

²⁷ The report, based in an analysis of January 2008 data, found that "DoubleClick and Google dominate overall market share capturing 35% and 34% of unique users, respectively. DoubleClick owns the head and Google owns the tail. For sites with over 1MM monthly unique users, Doubleclick has a 48% share, a 3x advantage over 2nd place Yahoo. For sites with less than 100k monthly unique users, Google has an 8x share advantage over 2nd place MSN." <http://attributor.com/blog/?p=37>. See also <http://www.emarketer.com/Article.aspx?id=1006157>.

users across an ever-broadening array of services and platforms.²⁸

Given the proposed acquisition of Yahoo by Microsoft, the consolidation of control over user data in a market influenced by the interests of the largest brand advertisers may very well shape the online and interactive content market in ways that are now unforeseen. The business model for online advertising perfected by Google and embraced by the industry as a whole has been based on the collection and use by marketers of an ever-growing amount of detailed information about individual users. This model was developed by the online ad industry without taking into account the privacy interests of individuals (let alone the ramifications of such a system to a democratic society). This proceeding on user privacy should be focused on protecting consumers, not on the self-congratulatory and speculative claims of online marketers such as Google. While online advertising provides many benefits, there should not be even a suggestion that they require consumers trading away their privacy rights and consumer protections.²⁹

Google correctly points to one of the key issues, but offers the commission a faulty analysis. Both IP addresses and cookies must be considered part of personally identifiable information. Google and most other online advertisers would prefer to hide behind the erroneous claim that IP addresses and cookies don't reveal an individual's physical identity (place of residence, phone number) or specific economic identifier (social security number). But they know that in today's digital marketing era, the very tiny bits of personal behavior they have identified are parts of individual human identity. Our "virtual" identities may be composed of discrete and disassembled bits of information about ourselves—what we like to read, watch, buy; our problems and concerns (such as health or our children's education) or our political interests—but they are very much living aspects of ourselves. The goal of interactive marketing is to collect,

²⁸ <http://www.feedburner.com/fb/a/about>; http://www.doubleclick.com/about/what_we_do.aspx;
http://www.youtube.com/press_room_entry?entry=RZs9p25QDCY.

²⁹ As for claims the industry is a dynamic one and privacy safeguards would harm innovation, any historian of the new medium knows that the "one-to-one" marketing paradigm focused on the collection and use of consumer information for micro-targeting has been—and remains—the fundamental focus of the online ad business since the early 1990's. See, for example, Jeff Chester, *Digital Destiny: New Media and the Future of Democracy* (New York: The New Press. 2007), esp. chapter 7.

analyze, and use such information to serve the interests of those paying for the targeting. The technique uses one, two or multiple individual data points in a variety of ways (search ads, broadband videos, virtual worlds) to get individual consumers to behave or act in ways that favor or reflect the marketer's goals. The record makes clear that IP addresses and cookies provide the technical means for the one-to-one targeting of consumers. Google's DoubleClick, for example, has used the services of Digital Envoy, a company that uses IP addresses and geotargeting to enhance the online ad targeting capabilities of marketers. Would Google claim that users shouldn't have to proactively consent when their IP addresses are used, in Digital Envoy's words, to

...accurately... identify a website visitor's location down to the city level worldwide, giving you the ability to analyze and evaluate data in real-time—and the information you need to make efficient and effective ad-serving decisions. With country-level targeting that's over 99.9% accurate and city-level targeting that's over 94% accurate, you will be able to serve the right messages at the right time... The precision targeting delivered by NetAcuity ...can also determine other pieces of information such as a visitor's connection type, ISP, domain name, company name, home or business and more, giving you the data necessary to target campaigns in new ways...³⁰

And "by leveraging IP Intelligence," marketers can "...build both real-time and historical analytical tools to enhance customer behavior management...resulting in increased revenue."³¹

3. Commission Must Broaden the Definition of PII

Therefore the commission must broaden the definition of PII to include IP addresses, cookies, and other relevant identifiers of digitally based user behavior and expression. Google protests that its collection of IP addresses for its search business should not be included as "the type of advertising that ought to be the focus of the FTC's efforts to develop effective self-regulatory principles." Given the important role that search plays in the overall consumer experience, including the interactive marketing process, the commission must decidedly include it in its framework and focus. Indeed, Google's own

³⁰ http://www.digital-element.com/ip_intelligence/targeted.html. See also the "Targeted Online Advertising Application Sheet," available as a pdf at above site.

³¹ http://www.digital-element.com/ip_intelligence/ip_intelligence.html. See also NetAcuity product sheet, accessible at the above link.

studies for marketers underscore the power of its so-called "non-PII" search-based ad targeting system.³² Google should also acknowledge that it has created a "high-level internal working group to provide advertisers with a more complete picture of how the entire online journey affects consumer buying." The standard for measuring the effectiveness of an online campaign is the "last-ad-clicked" model. But Google has said it is looking at how it can include previous online interactions. As reported by NMA Magazine, "Google said that the industry must be able to provide an effective tracking model that shows exactly how display, rich media, video and search... all influence branding and final sales, if it wants to attract more ad spend online." Adrian Joseph, Google's industry leader for its automotive vertical, who heads the working group, said, "As an industry we've been very good at last-click attribution but we really haven't understood the contribution of different click activity. That's why I think it's important for us to show advertisers exactly what the consumer journey is." He added that as Google expands beyond search into other areas, such as display and video, discussions with advertisers focus on online being a branding tool, rather than specifically for acquisition. But questions are raised over measurement.

"We're best known for our search product, but agencies are coming to us not just to ask about a search response but with challenges around changing their brand perception," said Joseph. "Our key message at the moment is the role of search beyond that final click to purchase." Google's comments [came] in the week Microsoft revealed Engagement Mapping, a tracking model using Atlas technology that also looks to address the last-click model.³³ Google also should acknowledge that its "universal search" service, according to its director in the United Kingdom "isn't just about accessing web results, but about taking that query and accessing a database of web results, book results, image results, local business results and pulling them together in a way that's most relevant for that

³² For example, at Engage 2007 in London, Google executive Matt Brittin explained that "25% of all searches end in a purchase" and "that 54% of searchers will use Google to identify other resources which can be used to find more products and services." <http://www.bigmouthmedia.com/live/articles/a-quarter-of-all-searches-end-in-a-purchase.asp/4246/>.

³³ Will Cooper, "Google Looks to Measure Ads Beyond Last Click," *NMA Magazine*, 28 Feb. 2008, <http://www.nma.co.uk/Articles/37009/Google+looks+to+measure+ads+beyond+last+click.html> [subscription required].

query." Such data points provide an array of information closely identified with users.³⁴ Google should have provided to the commission, as part of this proceeding, more information that explains the crucial role of its search engine business and data collection. The commission will, however, find numerous resources online that will help it better understand why Google wants to be unimpeded in its collection of consumer data.³⁵ We agree with Google that the issue of first-party vs. third-party advertising raises questions that should be addressed. But it underscores why the commission should enact national rules that will define how such distinctions and relationships are to be addressed. Given the consolidation in the online ad industry, ironically, it will not be difficult to develop rules that are embraced by almost all elements of the online ad industry. But companies such as Google and Facebook, for example, are actively seeking and supporting so-called third party applications (especially in online advertising context). The largest "portals" (such as Google, Microsoft, MySpace, etc.) and the online ad networks could develop the appropriate implementation safeguards that provide for consumer control over data. But if the FTC develops the necessary rules, applications will be created that minimize data collection and provide easy ability for users—especially in the evolving world of data and application portability—to have control over their data. After all, if Google can help create an "Open Social" regime for social networking, it should be able to propose an effective way to ensure that consumers actually control their data.³⁶

4. Changes of Control Must Require Affirmation of Consent

We are also unconvinced by Google's argument that companies not be required to obtain consent from users following changes in ownership, such as through mergers. Google understands that such transactions have been created based on a clear analysis and plan

³⁴ Will Cooper, "Google," *NMA Magazine*, 13 Dec. 2007, <http://www.nma.co.uk/Articles/36202/Google.html> [subscription required].

³⁵ See, for example, "The Role of Content and Brand in Search Marketing," 2 Apr. 2008, available as pdf at "Internet Marketing Workshop: Search—Using Search Intelligently to Get Noticed," <http://www.iabuk.net/en/1/eventsarch.html>; and "IAB Engage for Search," presentation from Google, bigmouth media, etc., 20 Feb. 2008, available as pdf at <http://www.iabuk.net/en/1/eventsarch.html>.

³⁶ <http://code.google.com/apis/opensocial/docs/index.html>. See also Google gadgets, which have an online ad function: <http://code.google.com/apis/gadgets/docs/spec.html>; <http://www.google.com/adwords/gadgets/>.

for the use of consumer data. Since the concept of "authenticated data" must include being given affirmative user consent for the collection and use of IP addresses and cookies, Google and other companies should be required to candidly inform consumers about changes to data-collection and privacy policies. Google and others must be required to respect personal data that are sensitive, including information collected in its search advertising business. As we will discuss, areas related to health, economic status, and political perspectives, as well as those relating to under-18 users, require meaningful safeguards.

The State of Behavioral Targeting Today

What the online advertising industry is doing that threatens consumer privacy is not a secret. As CDD and USPIRG (and others) have documented since 2006, techniques and technologies have been deployed that fundamentally threaten consumer privacy.³⁷ CDD and USPIRG have been engaged in the kind of industry analysis that the commission itself should be actively doing: attending industry conferences, obtaining documents and other materials, and following the trade publications. We are convinced, frankly, that if the FTC had the political will to do so, its staff could engage in the kind of market analysis that would make quite clear what the dangers are and how they should be addressed.

To help the commission, we offer the following excerpts culled from our monitoring of the industry.

1. Expanding Role for Behavioral Targeting:

- "Behavioral targeting circa-2007 merely took a given creative and attempted to place it where relevant.... 2008 enables advertisers and agencies to take a new approach to behavioral targeting. These campaigns act upon actual user response to product messaging, giving a more accurate read on consumer behavior while simultaneously placating those with concerns about privacy

³⁷ For example, see www.digitalads.org.

issues. If we conceive our behavioral campaigns this way, we'll be able to optimize, in real-time, the type and content of advertiser messaging."³⁸

- "Magnify360 developed the industry's most advanced web-based behavioral targeting platform. From initial contact and throughout the customer relationship, the magnify360 Platform builds and maintains comprehensive profiles of visitors based on 360+ dimensions. Simultaneously, the Platform tests, analyzes and delivers the optimal landing page or website experience to every visitor, based on their profile.... Depending on a visitor's score and level of engagement, the magnify360 Platform can trigger a wide variety of events including email, live chat, online meeting or assistance, instant call back and SMS, allowing you to communicate with your visitors while they're on your site and readily available."³⁹

2. Lead Generation and Behavioral Targeting

- "The interesting and unique thing about lead generation ad networks is that targeting is based on opt-in personal information about personal preferences. People decide what sort of information they want to divulge about the product categories they're interested in. So where the behavioral comes in is, once you know that information, you follow how consumers actually respond to the offers they get. This is a step beyond predicting what kinds of products consumers will be interested in. We're using it as a tool for us to target the highest yield offers for particular consumers based on how they respond to and interact with ads. This involves creative presentations and text, as well as the actual incentive.... [W]hat's being done now online will soon have enormous applicability to other media, especially mobile and IPTV. The technology is in place in mobile, for instance, to do some amazing things. You can imagine a consumer standing online at a McDonald's and getting a message on their cell phone saying 'You can have your meal half price if you go across the street to Burger King.'⁴⁰

3. Real-time Tracking of Individual Users

- "Technology has enabled marketers to tap into behavioral targeting, allowing them to watch how individuals are interacting with the online experience and to predict, in real time, the best message to launch.... Today, marketers have access to both customer identity (IP address) and customer personality (online behavior). Now, BT often relies on HTTP cookies—small pieces of data used to track and maintain the online actions of a user, such as sites visited and even items stored in an electronic shopping cart.... As BT reaches higher

³⁸ How to use, really use, behavioral targeting. 8 April 2008.

http://publications.mediapost.com/index.cfm?fuseaction=Articles.showArticleHomePage&art_aid=80127.

³⁹ http://www.magnify360.com/?sourceid=GAW_PR_M360&gclid=CMmjzOmnzpICFQIgPAodpEewHg;
<http://www.magnify360.com/prod-platform.html>.

⁴⁰ http://blogs.mediapost.com/behavioral_insider/?p=249.

levels of sophistication, [Tim] Vanderhook [of Specific Media] believes the next steps will be focused on truly achieving the dream of creating that highly coveted 360-degree view of the consumer. By combining demographic information and behavioral targeting, marketers will be able to determine not just which campaign to deliver, but which specific creative materials. Vanderhook illustrates a scenario where marketers can, in real time, identify whether the user is an 18-year-old male who would rather see a Honda with a pretty girl on the ad, or a working mother who would respond better to a Lexus ad with family-oriented features." Mr. Vanderhook defines behavioral targeting as "tracking a single user from one Web site to another and gaining info about them, what their interests are in life...."⁴¹

- "Our platform analyzes received profiles in real-time, categorize them and make the data available to the ad networks and publishers that indicated their interest in such a category. The preeminent way to do that is to organize data into deep verticals... Right now we have 40 different vertical categories of purchase intent data. For example, ad networks who are very interested in insurance-related products would use us to receive data related to insurance consumers so they could cookie them as demonstrating strong behavioral purchase intent for insurance-related products... the leaders in behavioral targeting in the coming year will be those who can combine deep granularity in very highly defined niches with large scale."⁴²
- "The vast, vast majority of all Internet users have cookies enabled in their browsers (a tiny percentage may have their cookies disabled or blocked due to software they may be running). Cookie technology is a reality that will remain a part of consumer tracking for individual Internet businesses. In the highly unlikely situation that a customer has cookies disabled, the customer is out of the range of publisher tracking and sales that occur cannot be tracked. However, more and more of TradeDoubler's advertisers are now set up to track even if cookies are blocked."⁴³

4. Applying Advanced Analytics and Analysis to Profiling

- "Mindset Media is the only provider in any medium that can target specific psychographics directly.... Mindset Media delivers your ads to internet users with your target Mindsets as they visit sites across the internet. We source quality ad inventory from brand-friendly publishers, which we screen to ensure that your brand message does not appear next to objectionable content.... Our proprietary table of elements makes Mindset targeting possible. The table comprises 20 personality traits that drive buyer behavior

⁴¹ <http://www.destinationcrm.com/articles/default.asp?ArticleID=7463>.

⁴² http://blogs.mediapost.com/behavioral_insider/?p=245.

⁴³ http://hstse.tradedoubler.com/file/20649/uk/help_centre/faq_tracking.htm#question_02.

and brand affinity across a broad range of consumer goods and services, from beauty care to banking, cars to credit cards, food to pharmaceuticals."⁴⁴

- "Is mindset targeting like behavioral targeting? They're similar but not exactly the same, says [Mindset Media COO Sarah] Welch. "Behavioral targeting waits for someone to 'trip a trigger' that tells the ad server they're likely to act, whereas mindset targeting doesn't have to wait for that trigger to happen," she explains. "Mindset targeting is better at the top of the funnel, to build awareness and seed visibility; behavioral targeting works better at the bottom of the funnel, when you want to reach someone ready to buy."⁴⁵
- "Instead of just tracking consumers' online actions, marketers should incorporate metrics that capture consumers' level of desire and emotional connectivity to brands.... [A] slew of new evaluation tools is already taking behavioral targeting in that direction. Offering a different focus than current cookie-reliant models, these new methods aim to gain a more comprehensive view of customer behavior. New methodologies are moving behavioral marketing in a promising direction toward a deeper understanding of consuming minds rather than just focusing on trackable behaviors. From a psychological perspective, the core of marketing is really about deconstructing human conduct. The goal in the digital space, then, is increasing desire, which can help drive more traffic to a site and increase purchase intent in the process. Research shows that 95 percent of our brains' operations occur below the level of conscious thought. With the advancements in technology, now's the time to tap into consumers' subconscious functions and start analyzing online behaviors as manifestations, or increments, of desire."⁴⁶
- "...Specific Media, one of the leading online advertising networks, has selected the IBM Balanced Warehouse to analyze large volumes of advertising data using advanced analytics and predictive modeling techniques. This analysis is integrated into Specific Media's sophisticated targeting technology platform, enabling the company to efficiently target consumers with increased accuracy.... Utilizing its broad network and powerful targeting technologies, Specific Media helps Fortune 500 advertisers reach highly specific audiences such as business-minded men, ages 25-54, living in large metro areas. IBM's Balanced Warehouse is helping the company offer brand advertisers a complete—and accurate—targeting solution, combining demographic, behavioral, contextual, and geographic methods.... Online advertising generates large volumes of consumer data that cuts across demographics, buying behaviors and geographies, and advertisers require

⁴⁴ <http://www.mindset-media.com/advertisers-products.php>; <http://www.mindset-media.com/advertisers-faq.php>.

⁴⁵ <http://www.clickz.com/showPage.html?page=3628814>.

⁴⁶ <http://www.clickz.com/showPage.html?page=3628691>.

accurate, detailed analysis of this information.... Our unique Behavioral Targeting Index scores each user's likelihood of completing a transaction in 3,300+ categories, turning online behavior into actionable data."⁴⁷

5. Advances in Tracking of Consumers Online

- "Microsoft is making... advancements in targeting with the introduction of a tool that integrates ROI measurement and tracking. For example, the last click in a sequence of online actions typically leads to a concrete and measurable action (e.g., a purchase). This last click, which usually takes the form of a search or text ad, will get clicked far more often than banners and other brand ads the consumer encounters along the way. The last click becomes the most important touch point while other branding ads are ignored or not fully accounted for. Current targeting methods are unable to assign quantifiable value to the various brand advertising, which Microsoft is trying to solve by using an engagement mapping tracking system that will ascribe value to all brand ads seen by consumers before they hit the last click. Thus, Microsoft is taking tracking beyond pure action and analyzing the impact of ads in a sequence of events."⁴⁸
- "The 'last ad clicked' is an outdated and flawed approach because it essentially ignores all prior interactions the consumer has with a marketer's message," said Brian McAndrews, senior vice president of the Advertiser & Publisher Solutions (APS) Division at Microsoft. "Our Engagement Mapping approach conveys how each ad exposure—whether display, rich media or search, seen multiple times on multiple sites and across many channels—influenced an eventual purchase. We believe it represents a quantum leap for advertisers and publishers who are seeking to maximize their online spends.... The Engagement ROI is a fully integrated reporting capability within the Atlas Media Console currently available through Microsoft. Value is assigned and measured on a real-time basis and takes into account the impact that recency, frequency, size and ad format (such as rich media and video) have on a consumer's online path to action. Engagement ROI is designed to allow advertisers and publishers to manage their campaigns with greater insight and control than previously available through third-party ad serving."⁴⁹
- "What individual users do on a site within a single session and across multiple sessions indicates both their interests and their intent. That's a very complex intersection and one where behavioral targeting has remained fairly undeveloped.... The learning curve of personal recommendations is to learn

⁴⁷ http://www.specificmedia.com/about-us-press-december_18_2007_SpecificMedia_Selects_IBM_Balanced_Warehouse.php.

⁴⁸ <http://www.clickz.com/showPage.html?page=3628691>.

⁴⁹ <http://www.microsoft.com/presspass/press/2008/feb08/02-25EngagementMappingPR.msp>.

how to figure out how a personal interest profile relates to intent in a given situation. The challenge is to develop easier ways of taking interest profiles and predict what intent is RIGHT NOW."⁵⁰

- "Even though measuring consumer activity on third-party sites is crucial, there is no doubt that your site also reveals an amazing amount of information about your customers. Factors such as how recently individuals have visited, frequency of visitation, the path they have followed on your site, visitation to key sections, purchases, downloads, session time, and registrations and logins can be leveraged to better segment and target relevant messages. But how can this be done? The answer is to use three key levers:

1. Customer state. Where customers exist in their lifecycle with your brand or company can be measured in several ways, including the aforementioned off-network exposures, frequency of visitation, visits to key areas of the site, and of course, conversion. Customers should be profiled over time to understand what their state is. Micro-lifecycle-targeting, for instance, using creative specifically designed not necessarily to convert the customer but to move them to the next state, can be very effective.... Most content targeting plans are designed for customer acquisition. Few focus effectively on driving customers through a customer lifecycle, but the profiles you have developed over time can absolutely be used to retain and grow your customers. Using many of the techniques discussed above, retention-based segments can be created that are based on past purchase behavior, value (current and perceived), loyalty, and so forth. Furthermore, it is possible to tie offline data (customer relationship management and direct mail segments, attrition models, purchase behavior, propensity modeling) to your online segments and targeting. While dependent on anonymous customer IDs that are consistent across both channels, this connection can greatly increase the amount of data available to micro-target and move customers through a lifecycle...."⁵¹

- "Since its inception, behavioral targeting has lacked the scale to deliver on the promise of true "precision targeting.... The good news, however, is that this capability is or will soon be available, via networks, via web-wide behavioral advertising and via data sales.... The web-wide behavioral advertising companies are able to leverage a large proportion of user surfing habits and their searches. So while portals such as Yahoo may collect information on a fraction of user surfing behavior, web-wide behavioral advertising companies are able to observe most of a user's surfing behavior. Having such rich information allows companies in this space to build much larger, and define

⁵⁰ http://blogs.mediapost.com/behavioral_insider/?p=2.

⁵¹ Available as pdf at <http://blog.guykawasaki.com/2008/02/avenue-a-razorf.html>.

more meaningful audience segments, which in turn will enable advertisers to tailor their offerings to their specific desired audiences.

"Moreover, having instant access to user surfing behaviors means that profiles can be developed quickly—really quickly. Web-wide behavioral targeting can develop detailed profiles in a single surfing session, something it would take "traditional" BT players weeks or even months to do. And as profiles are developed almost instantaneously.... For over a generation, companies such as Experian and Acxiom have provided businesses with the opportunity to enhance their offline data.... In any event, as the large data companies begin to develop online profile segments, it's only a matter of time before they look to sell those profiles to online advertisers and publishers to use as behavioral segments."⁵²

- "...[U]sing purchase behavior targeting... Nothing is going to give brands a better predictor of future success than leveraging purchase behavior. Demographic targeting has provided decent surrogates for target audiences in traditional media over the years, but there are only a handful of legitimate reasons why one would want to continue to use demographic targeting when purchase behavior is available for targeting purposes. Purchase behavior brings the online medium closer to the day when advertisers will be able to tell agencies and media partners, 'Give me the three million people most likely to buy my product,' and they'll have the data and rationale to back up a behaviorally-targeted recommendation."⁵³

Social Networks and Other Emerging Areas For Commission Review:

This is one of the most important areas for the commission, especially given the large youth population of users for such services as Facebook and MySpace. The commission should not stand meekly by and not challenge the claims, offered by MySpace in its February 2008 media kit for prospective advertisers, that there is a "Self-Expressed Data Difference. MySpace users *want* to share personal information-it's a fundamental part of how they express themselves and connect with others.... The freely expressed data in a user's profile offers marketers more authentic, powerful and direct targeting beyond common proxy methods." The commission should investigate the privacy issues especially related to the adolescent users of MySpace. In the same media kit, MySpace lists "teens" among its "valuable audiences" (the others include moms, Hispanics, and college students). MySpace touts that it can "Reach 6.2 million users aged 15-17;

⁵² <http://www.imediaconnection.com/content/18668.asp>.

⁵³ <http://www.imediaconnection.com/content/16522.asp>.

MySpace is the #1 most-viewed site for teens aged 15-17 [and] 57% of all online teens use MySpace regularly!"⁵⁴

1. MySpace Model Deserves Scrutiny

We would hope that the FTC would address the privacy and consumer protection issues inherent to MySpace's claim that it now offers "Next-generation targeting," since it combines both "registration data: personal demographic information provided by MySpace users when they become members," along with "MySpace Profile data: Freely expressed information by consumers about their passions and interests." We doubt that MySpace users understand they have been placed inside MySpace's "HyperTargeting Product," where they are considered "hand raisers within hundreds [746] of specific interest segments," and where they are targeted also by the "keywords expressed within profiles or blogs." Those users are also classified within "specialized segments" for targeting, with names as "Dr. Dre, Hard Rock, Nintendo, Thrillers," etc. We urge the FTC to examine closely MySpace's "HyperTargeting Segment List" to better understand the privacy issues related to being classified as a target under such "Genres and segments" as "Teen Pop, Rap/Hip Hop, Children and Family, Religion & Spirituality: Good vs Evil, Gay & Lesbian Films, Horror: Satanic Stories, Politics, or Tattoos."⁵⁵

- "Fox Interactive Media...will deploy the HyperTargeting ad platform... across FIM properties. The system uses data gleaned from MySpace profiles and other company sites to target display ads to hundreds of niche audience segments. According to FIM, at least 750 segments currently exist. The company aims to put that technology to use on other publisher properties, too. This could mean either selling it to other sites or using it to build an ad network, allowing FIM to purchase and serve ads into third party inventory."⁵⁶
- "There have been several generations of advertising: display; then search; Google followed up with contextual like AdSense, and then with behavioral targeting, which is based on individual users' behavior across the Web, and the history built there. We focus on the next level, which is social advertising. We can take advantage of the power of all the prior generations and the information that goes with it, but then we can also factor in new data about

⁵⁴ "MySpace Targeting Capabilities: Reaching the Right Consumer in a 2.0 World," Feb.2008, Fox Interactive Media [personal copy].

⁵⁵ op cit.

⁵⁶ <http://www.clickz.com/showPage.html?page=3629015>.

how these people interact with each other in a safe, sharing-based environment. This is a capability advertisers have never had before.... We can see people interacting with each other within the network or in an application, then derive a sense of which friends are more influential than others to that particular user. For example, certain friends interact with a travel ad, others interact with an electronic ad, others interact with an automotive application. Based on those behaviors, we can rank, filter and target ads."⁵⁷

- "One of the most critical things moving forward is understanding that within social media, click-through rates aren't the most accurate measurement of success. A truly engaged user is more valuable than a click, and we now have the data to prove this.... We positioned ourselves to be the premier aggregator of intelligence within social media. Our technology gathers tremendous amounts of data inherent to user-generated content, and we use this to build targeted and customizable audiences...."⁵⁸

2. New Targeting Applications—Widgets

- "In May 2007, Facebook launched Facebook Platform, which opened up the site to outside developers, granting them unprecedented access to its core functions and changing Facebook from a closed social network into an open business forum.... Because of their deep integration into Facebook, developers have extensive access to user information, but it is often unclear if, when and how they exploit this data. This situation is perpetuated by Facebook's unwillingness to regulate the widgets that operate on the site. As a result, users often have no idea who is collecting their data, how information is obtained as one interacts with these applications and how such data—even so-called not non-personally identifiable information—is subsequently used.... There are nearly as many ways to monetize a widget as there are kinds of widgets. The most common means of monetization is advertising.... Perhaps the most complex forms of monetization are data collection and lead generation. Although Facebook's privacy policies don't allow personally-identifiable user data from profile pages to be sent outside of Facebook, some developers have circumvented this rule by serving surveys or giveaways that require users to disclose personal information, which is then sold to marketers and other data aggregators."⁵⁹
- Gigya has "built a widget advertising network... with our model the advertiser creates a dedicated brand widget, it's not a sponsorship model. The advertisers pay to get their brand widget installed on a user's page where they engage with it on a regular basis.... Gigya technology allows users to grab rich media

⁵⁷ <http://www.clickz.com/showPage.html?page=3628619>.

⁵⁸ <http://www.clickz.com/showPage.html?page=3628817>.

⁵⁹ http://democraticmedia.org/current_projects/privacy/analysis/facebook_economy.

ad units and embed them to a page, in addition to playing with it on a page where a user can grab it.... We can reach people at their time of install and present ad widgets there. We have the ability to serve tens of thousands of ad installed widgets per day so we can deliver the scale advertisers need to seed a viral digital ad campaign.... Impressions is the standard, how many times a widget is loaded on someone's page. There are viral measurements so advertisers are looking at how is this widget spreading and by what network.... Less standard are custom metrics, which can measure any interaction with the widget.... They reach active social media users, people who use social networks and blogs. They're for advertisers who are trying to reach an audience of social media users."⁶⁰

3. Rich Media

- "...DoubleClick Monday unveiled a new reporting tool to help marketers determine the effectiveness of individual rich media metrics. The ad technology company's Spotlight for Rich Media will enable advertisers and agencies to measure conversion rates for various actions taken within rich media ads, including rollovers, ad expansions, multiple click-throughs and video plays. Previously, DoubleClick's Spotlight reporting feature tracked conversion rates for overall ad impressions without digging deeper into the performance of an ad's separate interactive elements. "These [rich media] ads are becoming like microsites on their own, and no one's been able to identify what generates results and what doesn't," explained Ari Paparo, vice president for advertising products at DoubleClick... Starcom USA is among several agencies that have been testing DoubleClick's more refined reporting capability. "This is an important breakthrough, because we're now able to use DoubleClick's Spotlight for Rich Media to more efficiently capture and report on data that is increasingly crucial to understanding the full impact of advertising," said Jeff Marshall, Starcom's senior vice president and digital managing director, in a prepared statement. Agency clients already using DoubleClick's DART ad-serving platform can simply use existing Spotlight tags within the platform to begin measuring rich media conversion rates. There is no extra charge for the new service. The conversions themselves can be tailored to the goals of a particular campaign, and include actions such as purchases, newsletter sign-ups and page views."⁶¹
- "Everyday we deliver millions of impressions to users across leading social networking environments, video sites and gaming applications. We develop rich user profiles that enable advertisers to start with the right audience. Our unique video advertising formats and targeting approach deliver higher engagement rates for brands and more relevant ad experiences for

⁶⁰ <http://web6.shootonline.com/go/news-view.rs-web1-483042-1201898944-2.iChat--Liza-Hausman--Gigya-s-VP-of-marketing--Discusses-Widget-Advertising.html> [subscription required].

⁶¹ http://publications.mediapost.com/index.cfm?fuseaction=articles.showarticlehomepage&art_aid=73748.

consumers.... We recently launched a performance-based offering specifically designed for brand advertisers. We call it AdFrames, and it expands our reach even further into social spaces with flexible rich media and video ad units that live in places where a new online generation spends their time.... We have 200 sites and applications in our network including over a hundred of the top Facebook apps, as well as leading social network and video communities like Bebo, Hi5, imeem, and Buzznet, reaching 50 million uniques a month.... By partnering with leading social networks and third-party applications, the company has created an efficient platform that delivers video and interactive rich media advertisements into communities in a manner that enhances rather than disrupts the user experience. It's called invitation-based advertising and it now reaches over 50 million new media users per month. The Eggnetwork also offers targeting tools for these interactive environments. Advertisers can choose to pinpoint their exact audience by demographics, user interest, social variables, and behavioral patterns as well as by content category and application.⁶²

4. Behavioral Targeting and Mobile Communications

- "Acuity Mobile and Acxiom Corporation today announced a powerful new mobile marketing solution that integrates world-class consumer data and behavioral analytics with the industry's leading real-time mobile content delivery platform. The new mobile marketing solution exceeds current industry offerings by marrying Acxiom's data and analytical capabilities with Acuity Mobile's location-based technology and Spot Relevance offering the ability to deliver mobile content to the right user based on time, context, location and user preferences.... Acuity Mobile's patented Embedded Mobile Advertising Platform (EMAP) is the only mobile marketing solution that delivers Spot Relevance. By incorporating customer information data from Acxiom into the EMAP Preference Engine, the technology platform will facilitate relevant content delivery to a specific person based on preferences, time, context and location. This partnership will further allow clients to heighten marketing ROI and deepen customer relationships through a new mobile channel."⁶³

Children and Adolescents

In the 11 April 2008 submission by children's media, health, and advocacy groups, CDD and others raise a number of concerns on children and adolescents. As CDD and USPIRG reminded the FTC in November 2007, we believe there are serious violations of

⁶² <http://www.videoegg.com/adnetwork>. See also Fact Sheet. Available as pdf at http://www.videoegg.com/press/partner_announcement.

⁶³ http://www.advfn.com/news_Acxiom-Corporation-and-Acuity-Mobile-Partner-to-Power-Targeted-Mobile-Marketing_20716234.html.

youth privacy throughout the digital marketing system. We will supplement what we submitted last fall with a few other examples that warrant immediate action by the agency.

For example, the "premier teen ad network" Teen.com, operated by Alloy, promises marketers that "our network of 'Web 2.0' sites is built upon the strength of our legacy and dedication to the user experience, delivering unequalled targeted reach and ad performance to the youth-focused brands and Interactive ad agencies. Currently we offer an unparalleled 19 Million monthly uniques in the teen demographic through our teen.com network of approximately 20 sites." We doubt that Teen.com's youthful users spend time readings its privacy policy, where they would be informed:

Our site may contain links to other sites whose information practices may be different than ours. You should check the other sites' privacy notices since we have no control over information that is submitted to or collected by them. We may offer e-mail services, contests, sweepstakes, or promotions that are sponsored by or co-sponsored with non-affiliated companies. Based on our agreement with them, these third parties may obtain personally identifiable information that site visitors voluntarily submit to participate in the contest, sweepstakes, or promotion. We have no control over the use of this information by these companies.... To enhance your online experience with us, many of our web pages use "cookies." Cookies are text files placed on your hard disk by our web server to store your preferences. Cookies, by themselves, do not tell us your e-mail address or other personally identifiable information unless you choose to provide this information to us. However, once you choose to provide the personally identifiable information, this information may be linked to the data stored in the cookie. Cookies cannot be used to run programs or deliver viruses to your computer. We use cookies as a convenience feature to save you time, to understand how our site is used, and to improve the content and offerings on our site. For example, we may use cookies to personalize your experience at our web pages or recall your specific information on subsequent visits (e.g. to recognize you by name when you return to our site). We also may use cookies to offer you products, programs or services. You can opt to have your browser reject cookies. If you do that, you may need to re-register with us every time you visit our site in order to participate in certain promotions and other stuff. You should also know that companies that advertise on our web site (and their agents) might use their own cookies. This policy does not cover how these companies use their cookies. As you use the Internet, a trail of electronic information is left at each web site you visit. This information, which is sometimes referred to as "clickstream data," can be collected and stored by a web site's server. Clickstream data can tell us the type of computer and browsing software you use and the address of the web site from which you linked to alloymarketing.com. We may use clickstream data as a

form of non-personally identifiable information to anonymously determine how much time visitors spend on each page of alloymarketing.com, how visitors navigate throughout the site and how we may tailor our web pages to better meet the needs of visitors. This information will only be used to improve our site. Any collection or use of clickstream data will be anonymous and aggregate. From time to time we may supplement information you give us with information from other sources, such as information validating your address. Thus, information we obtain through alloymarketing.com may be intermingled with and used in conjunction with information obtained through sources other than alloymarketing.com, including both offline and online sources.⁶⁴

As we pointed out the commission last spring when the CDD and the Berkeley Media Studies Group formally submitted its report on the role of digital marketing, including behavioral targeting, in contributing to the current child and youth obesity crisis ("Interactive Food & Beverage Marketing: Targeting Children and Youth in the Digital Age"), a range of new data collection and targeting approaches have emerged that focus on adolescents. Just this week, for example, Habbo, which describes itself as "one of the world's largest and fastest growing online destinations for teens" and has expanded its business in the U.S. with now over 1.3 million teen users here, announced a new partnership with "in-game ad serving technology" Double Fusion.⁶⁵ According to the announcement,

Double Fusion will manage media sales and coordinate in-game, integrated marketing campaigns that position brands in an exciting and authentic way to Habbo.com's massive and hip teen audience.... Utilizing their extensive sales experience in 2D and 3D environments for in-game advertising and marketing campaigns, Double Fusion will work with advertisers from the entertainment industry, retail, fashion and sports arenas to create relevant and interactive brand campaigns.... Double Fusion is unique in its ability to blend traditional media with immersive online campaigns.... Leveraging Habbo's virtual world for real world branding, advertisers can execute a variety of marketing initiatives, including in-game billboards, contests, interstitials and instant-console messaging, customized brand rooms, sponsored quests—all of which create a natural integration that adds value and appeals to teens.⁶⁶

⁶⁴ <http://www.teen.com/>; <http://www.alloymarketing.com/privacypolicy.html>. See also: <http://news.moneycentral.msn.com/ticker/article.aspx?Feed=BW&Date=20071217&ID=7949394&Symbol=ALOY>.

⁶⁵ <http://www.sulake.com/habbo/advertising?navi=2.3>; http://www.news.com/8301-10784_3-9866949-7.html; http://www.doublefusion.com/press/html/Habbo_7_4_08.html. Jeff Chester and Kathryn Montgomery, "Interactive Food & Beverage Marketing: Targeting Children and Youth in the Digital Age," 2007, <http://www.digitalads.org>.

⁶⁶ http://www.doublefusion.com/press/html/Habbo_7_4_08.html.

As Double Fusion explains to potential advertisers, as part of its tracking system it

...tracks all aspects of campaigns to provide the full visibility, accountability and optimization required to deliver advertiser return on investment. As the most accountable ad medium, videogame advertising campaigns are tracked and measured at standards above all other media including ad size, view and time. Standard and custom reports are available. Double Fusion also works with advertisers to provide advertising effectiveness studies by going directly to gamers to capture campaign results: brand awareness, recall and rating, likelihood to recommend brand, brand fit within the game, perceived brand characteristics and many other metrics.⁶⁷

Teens are the focus of Double Fusion, as they are of Habbo. Double Fusion explains to marketers in its "Who is the Gamer" that "Americans 12 years old and over (one third of the population)... 80% of teens... 90% of teen boys consider playing videogames to be 'in.' And they're playing more than ever: ...12-17 year olds are playing an average of 11.5 hours a week.⁶⁸ And Habbo explains that "70% of Habbo users are 13-16 years old."⁶⁹ This announcement is just one of a handful of new data collection and marketing initiatives aimed at the U.S. child and adolescent audience. The commission so far has failed to address these newly emerged data collection for targeted marketing practices.

Health Information:

- "...According to a recent Forrester Research report, 84 percent of online consumers have researched healthcare topics online in the past 12 months, while 81 percent visited healthcare Web sites.... Healthline.com lets users search from a list of symptoms and health topics to find their information. On the side of the page, a symptom search for "cough" serves up an ad for an asthma inhaler; a search for "vomiting" serves an ad with no brand name, just a question such as, "What does your period have to do with migraines?" and a link to an informational site and then to a microsite for information on a migraine product. A click through to the very sensitive topic "breast cancer" serves an ad asking about wanting a break from the vomiting that comes from chemotherapy with a link to a medication that helps prevent the nausea and vomiting caused by chemotherapies. This approach was echoed by Tacoda, which will be working with Healthline.com to further its behavioral targeting... GoodHealthAdvertising.com, an ad network of health sites, tries

⁶⁷ <http://www.doublefusion.com/advertisers/html/research.html>.

⁶⁸ http://www.doublefusion.com/advertisers/html/who_is.html.

⁶⁹ http://www.sulake.com/press/releases/2008-04-03-Global_Habbo_Youth_Survey.html.

to bridge the gap between this consumer safe-space and the medical professionals and drug companies."⁷⁰

- "Good Health Advertising connects Health-focused and Pharmaceutical Advertisers with Healthcare Consumers. Reach more than 6 million health and medical information seekers across our Partner network. Target by criteria such as: Medical Condition—i.e. Diabetes, Depression, Back Pain. Demographic—i.e. Women's Health, Men's Health, Children's Health, Healthy Living—i.e. Nutrition, Fitness, Diet & Weight Loss Content Site—i.e. select any one or combination of our sites. Engage our Audience with: Targeted banner campaigns. Insertions within daily and monthly email newsletters. CRM programs reaching opt-in recipients. Lead Generation and Data Capture programs. Pre-roll Video Advertising. Custom Content Development, Sponsored Content Sections, Video production and Video-on-Demand (VOD) Health Channel sponsorships."⁷¹
- "RealAge, a health information property, was purchased this week by Hearst Magazines for an undisclosed sum. (Analysts pegged the deal at just under \$100 million.) With the acquisition, Hearst is trying to catch a wave of change now underway in how drugs are marketed online...drug marketing campaigns—online anyway—are coming to resemble a combination of traditional marketing campaigns and customer relationship management programs. RealAge... has built its name by offering a 150-item questionnaire that promises to tell visitors their actual age by analyzing a collection of factors ranging from one's cholesterol level and flossing habits to average driving speed and pet ownership. Those with ailments or specific medical interests can then receive care recommendations or subscribe to content-specific newsletters that RealAge pairs with sponsor messages.... Acid reflux drug brands Nexidia and Protonix are among the sponsors of heartburn content on newsletters published by a firm called MedTrackAlert, a RealAge competitor that offers dedicated newsletters for sufferers of 26 diseases. The strategy, as with RealAge, is to provide marketers with venues to advertise specific-use drugs in hard-to-isolate segments of the online population.... If creating stickier sites is a trend, then hosting communities where symptom carriers can interact with one another is a holy grail."⁷²
- "BlueLithium today announced a breakthrough solution to help pharmaceutical manufacturers overcome the challenges of recruiting patients for clinical trials. The solution is being launched in partnership with San Diego, CA-based morefocus group inc., a pioneering publisher of unbiased

⁷⁰ <http://www.dmnews.com/Consumers-find-its-a-quotMyquot-medical-world-online/article/98328/>.

⁷¹ <http://www.goodhealthadvertising.com/advertising.html>. This site doesn't appear to have a privacy policy displayed.

⁷² <http://www.clickz.com/showPage.html?page=3627084>.

online health information and screening technologies.... BlueLithium has the ability to reach 119 million users or 68 percent of the U.S. Internet population and drive them to high quality editorial content and screens addressing specific disease conditions and treatments provided by morefocus. This now enables pharmaceutical manufacturers to locate and meet their targets for qualified trial candidates days or weeks, rather than months and years.

- "Historically, finding subjects for clinical trial has been a lengthy, expensive process," said Jay Webster, GM of BlueLithium's Performance Network. "This exclusive partnership between one of the largest US ad networks and one of the most respected publishers of quality online medical content is changing the paradigm."... "The increasing cost and difficulty of completing recruitment in a timely fashion in the U.S., had moved an increasing percentage of clinical trials overseas," said Colin Lucas-Mudd, morefocus CEO, "However with over 85% of U.S., patients researching their condition on-line, it is now possible to reach, screen and recruit volunteers in North America with a proven Web-based recruitment solution, The on-going compliance and persistency opportunities are an added, 'though very important, bonus." The combination of BlueLithim's unparalleled reach and the morefocus content and screening platform, covering more than 100 conditions and orphan diseases, provides a unique opportunity for instant response outreach."⁷³

ISPs as Data-Collectors

Internet service providers, the very portals through which every citizen accesses the Internet, have until recently had little financial incentive to participate in archiving user activity. The advertising industry has been naturally attracted to these all-knowing repositories of user activity and has accordingly developed a new tracking technology designed for ISP systems. The next generation of interactive advertising has manifested itself in the form of partnerships between ISPs, ad networks, and publishing companies. The result is a more comprehensive monitoring capability that takes a major step toward the advertising industry's goal of consumer behavior omniscience. This recent and dramatic development requires an equally dramatic investigation by regulatory bodies. Unfortunately, the FTC's proposed privacy principles fail to keep pace with this new form of rapidly evolving behavioral targeting technology.

⁷³ <http://www.bluelithium.com/press/2007092401.html>.

New ISP adapted tracking technology developed by companies such as Front Porch, NebuAD, and Adzilla represent an alarming increase in these tracking abilities and thus require close review. While earlier tracking systems were limited by website affiliation to a given ad network, this new tracking technology is implanted directly into ISP systems, and has the capability of tracking users wherever they go. Front Porch claims to enable "Internet providers to leverage their networks to deliver any targeted ad or customer message directly to users' browsers anytime and anywhere they surf on the web."⁷⁴ NebuAd makes clear the all-seeing and all-invasive capabilities of its technology, explaining on its webpage that "NebuAd combines web-wide consumer activity data with reach into *any site on the Internet*" (emphasis added).⁷⁵ In light of this expanded reach, the FTC's proposed rule of mandating a disclaimer for every site that collects user data is almost meaningless. It does not matter which sites are visited because they can *all* be monitored by the ISP, and a simple one-time disclaimer should not grant advertisers permanent access to all future user activity, especially if the user is a minor who many not realize the full implications of what they are agreeing to.

ISPs have traditionally been regarded as disinterested entities, with the sole purpose of granting user access to the Internet, and this neutral stance has been fatally compromised because of companies like Phorm and NebuAd. Previously ISPs had little reason to affect user activity, but engaging them as advertising partners provides a monetary incentive for attempting to control the user experience. The language used in documents meant for the eyes of prospective advertisers paints a picture of users as ripe for manipulation. Front Porch, for example, explains how its technology can be used by ISPs to manipulate user activity in a number of ways, including "increas[ing] traffic to ISP portal or partner sites," driving "subscribers' home page to a designated page," and restricting "access until users accept terms of service."⁷⁶ NebuAd promises the delivery of "actionable consumer intelligence" to the ad networks it partners with, as if it were the CIA or FBI referring to

⁷⁴ <http://www.frontporch.com/html/index.html>.

⁷⁵ <http://www.nebuad.com/company/company.php>.

⁷⁶ http://www.frontporch.com/html/docs/briefs/Solutions_Overview.pdf.

suspected terrorists. All this adds up to a more controlled experience for users at the mercy of Internet providers who can see their every move.

Already, trials are underway in the U.S. involving this invasive form of data collection and targeting. According to recent reports, "One of NebuAd's ISP partners, CenturyTel, has contracted with the firm to conduct a trial in one of its markets. CenturyTel spokesperson Annmarie Sartor declined to name the market or the number of subscribers covered or to specify when the test would end.... CenturyTel offers long distance and Internet access services in rural areas in 26 states. Should they aggressively pursue such data gathering methods, ISPs may achieve a level of behavioral tracking heretofore unknown online."⁷⁷

The Growing Role of Behavioral Targeting

If the FTC is to protect consumers, it will have to commit itself to truly and efficiently enacting meaningful safeguards. In the ad industry's "CMO Roundtable Discussion" for its Marketing @ Media Ecosystem 2010, "consumer insights and behavioral targeting" had the highest ranked responses (82 percent and 80 percent, respectively).⁷⁸ That reflects the predicted "explosion," as eMarketer terms it, with companies expected to spend \$1 billion on behavioral targeting products in 2008. In just a few years—eMarketer says 2011—the behavioral targeting segment of the market will total \$3.8 billion. As they explain, "Internet advertising is no longer all about paid search. Targeted online display advertising is exploding."⁷⁹ Will the FTC stand on the sidelines while a system grows that permits marketers to acquire an array of insights about individual consumers that is sold and traded in the marketplace, regardless of whether users are informed and give affirmative consent? Will they permit, as JP Morgan's *Nothing But Net* 2008 report suggested, behavioral advertising to evolve from a system where "advertisers used to pay for audiences on websites but will now start to pay for specific

⁷⁷ <http://www.clickz.com/showPage.html?page=3628004>.

⁷⁸ www.iab.net/media/file/MME_2010_Slides.pdf.

⁷⁹ <http://www.emarketer.com/Article.aspx?id=1004989>.

users."⁸⁰

Some ad industry leaders recognize that the time to protect consumer privacy in the online marketing era is now. According to one report, GroupM CEO Marc Goldstein told an industry group in March 2008 that "the industry's technological advances have brought tremendous new insights into consumer behavior and a greater ability to target, and he admonished the industry to manage consumer privacy responsibly and proactively."⁸¹ Goldstein noted, explained another publication, "that recent developments in measurement, such as C3 (live viewing plus three days of DVR playback) and second-by-second ratings, set-top-box data and a move toward addressability will put added pressure on marketers to respect consumer privacy."⁸²

The proposed FTC staff principles, while well meaning, simply don't go far enough in ensuring that every U.S. citizen and consumer is afforded meaningful protections in the digital marketing era. The commission must play a more proactive role in this area, crafting policies, investigating industry practices, bringing complaints and enforcement actions, and calling on Congress and other regulatory bodies to take appropriate measures. As CDD and USPIRG made clear in their November 2007 complaint, behavioral targeting and interactive marketing have played a contributing role in the current national economic crisis related to sub-prime and other mortgage loans. We urge the commission to act responsibly and pursue an investigation into this area.⁸³ The FTC, we believe, has been complicit in the undermining of confidence in the U.S. economy, not to mention the financial and personal economic and social losses faced by millions of Americans. The commission must proactively address other sensitive data issues as well, especially as they relate to children and teens. If the agency cannot ensure our nation's youth have their privacy—let alone their personal security—protected, then it clearly has

⁸⁰ https://mm.jpmorgan.com/stp/t/c.do?i=2082C-248&u=a_p*d_170762.pdf*h_-3ohpnmv.

⁸¹ <http://www.paidcontent.org/entry/419-ad-industry-roundup-4as-edition-privacy-warning-paid-search-google-prot/>.

⁸² http://adage.com/mediaworks/article?article_id=125534.

⁸³ <http://www.countrywide.com/global/privacy.asp>;
<http://www.lendingtree.com/stmrc/privacy.asp?inline=true#a>.

its priorities misplaced.⁸⁴ The dramatic growth of online health information and marketing over the last several years is another example of the FTC's laggard approach to the harms consumers face from the ever-expanding tentacles of interactive marketing. Having "workshops" after the market has taken hold is not an approach an agency should embrace when it is responsible for protecting consumers. For example, the FTC should have launched an inquiry last year when the Nielsen Company announced its new health-related service:

NielsenHealth utilizes a broad selection of proven analytical tools and data sources from healthcare and related industries that bring deeper insights concerning the patient and physician.... By integrating all health-related information from The Nielsen Company, NielsenHealth provides breakthrough capabilities in areas like trendspotting, segmentation, physician messaging and advertising effectiveness. In addition, NielsenHealth will address many unmet needs of the healthcare industry, including: 360 degree understanding of how patients treat their conditions and manage their lifestyles, and how best to reach them....Improved TV and online media targeting....⁸⁵

So, too, should the FTC acted in response to the campaign launched by online marketer e-tractions on behalf of the drug Lunesta,

...a multi-layered, multi-phased online marketing campaign designed to create awareness, stimulate conversion and maintain persistency through relationship marketing. Campaign elements were tracked and measured using EnterAct™, the e-tractions technology platform. The resulting analytics allowed e-tractions to optimize media and messaging for maximum efficiency.... e-tractions seeded the market prior to launch with the unbranded site: getsomesleep.com.... The registration form gave LUNESTA the opportunity to gather profile information and build a database of opt-in subscribers. At the time of launch, LUNESTA had 25,000 registered users with profiles on gender, income and insomnia symptoms. With the launch of LUNESTA, e-tractions deployed multiple online media designed to build the opt-in database and support the offline awareness campaign. The online media mix included co-registration, banner advertising and search. Email was used to gather additional demographic, psychographic and behavioral data from opt-in registrants.⁸⁶

⁸⁴ The FTC should be at least as active as European officials, who have documented how social networks pose both a privacy and personal security risk to youth. See, for example, "Security Issues and Recommendations for Online Social Networks," European Network and Information Security Agency, Oct. 2007, available as pdf at www.enisa.europa.eu/doc/pdf/deliverables/enisa_pp_social_networks.pdf.

⁸⁵ http://www.nielsen.com/media/2007/pr_070809.html.

⁸⁶ www.e-tractions.com/web_dev/downloads/LUNESTA_CS.pdf.

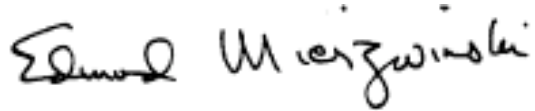
Conclusion

CDD and USPIRG will continue their work to provide the public and policymakers with information about the threats to consumer welfare from the excesses of the online ad industry. We support a separate FTC rulemaking for each of the following sensitive data issue areas: children, teens, health and medical, and financial. Thus we will continue to press the FTC and Congress to act proactively. Unfortunately, the commission is currently failing to protect U.S. consumers. How long will the public have to wait before the commission has the determination to address 21st century consumer protection issues? The proposed staff principles, developed as a result of our political prodding and with the support of several staff members concerned about the public welfare, have helped further the dialogue. But the time for debate is long over. Privacy regulations are required, ensuring that all Americans are protected by Fair Information Practices.

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